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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 AECON BUILDINGS, INC.,

8 Plaintiff,

9 v.

10 ZURICH NORTH AMERICA, et al.,

11 Defendants.  
12

Case No. C07-832MJP

ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
DISCOVERY SANCTIONS

13 This matter comes before the Court on Plaintiff's motion for discovery sanctions against  
14 Defendant Zurich.<sup>1</sup> (Dkt. No. 124.) Zurich opposes the motion. (Dkt. No. 152.) Having  
15 considered the motion and response, Plaintiff's reply (Dkt. No. 158), all documents submitted in  
16 support and the balance of the record, and having heard oral argument on the matter, the Court  
17 GRANTS Plaintiff's motion for discovery sanctions and imposes fees in an amount equal to that  
18 billed by litigation counsel between the filing of initial disclosures and May 23, 2008.

19 **Background**

20 Many of the facts related to this motion were recently discussed in the Court's order  
21 granting Plaintiff's motions for bad faith against Defendants. In brief, this insurance coverage  
22 action arises from claims made by the Quinault Indian Nation ("the Quinault") against Aecon  
23 Buildings, Inc. ("Aecon") regarding the construction of a casino and hotel project in Ocean  
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25 <sup>1</sup> The Court refers to all of the Zurich defendants — American Zurich Ins. Co. (referred  
26 to in the complaint as Zurich North America), Zurich American Ins. Co., Northern Ins. Co. of New  
27 York, and Valiant Ins. Co — collectively as "Zurich."

1 Shores, Washington. Aecon was the general contractor for the project. Chinook Builders, Inc.  
2 (“Chinook”) and Western Partitions, Inc. (“Western Partitions”) were two of the subcontractors  
3 Aecon hired to work on the project. Construction commenced in May 1998 and was  
4 substantially completed on June 9, 2000. (Dkt. No. 134, Blood Decl., Ex. 1 at ZC 000665.) In  
5 April 2004, the Quinault contacted Aecon alleging defects in the project. When it became  
6 apparent that Aecon might be held responsible for defects in the work performed by a number of  
7 its subcontractors, Aecon sued the subcontractors in state court and tendered claims for defense  
8 and indemnity to them and their insurers. Both of the subcontractors involved in this litigation  
9 had entered into subcontract agreements with Aecon in which they agreed to defend and  
10 indemnify Aecon for claims arising out of their work and in which they agreed to list Aecon as  
11 an “additional insured” under their respective liability policies. (See Dkt. No. 110-5, Blood  
12 Decl., Ex. 1 at AEC 081767, 081769; Dkt. No. 105-4 at AEC 9229, 9231.) The insurers —  
13 Hartford Casualty Insurance Company (“Hartford”) for Chinook and Zurich for Western  
14 Partitions — both refused to defend or indemnify Aecon. Zurich did, however, defend Western  
15 Partitions against Aecon’s third-party claims in the state court case under a reservation of rights  
16 and then settled Aecon’s claims against Western Partitions in the underlying suit. Aecon  
17 partially settled the Quinault’s claims in early June 2006 for approximately \$1.9 million and  
18 fully and finally resolved the dispute on January 31, 2007, for \$3.75 million after a final  
19 mediation proceeding. (Dkt. No. 105-10, 105-14.) Aecon initiated this suit against Hartford and  
20 Zurich in April 2007, claiming that Defendants breached their duty to defend and indemnify  
21 Aecon, breached their duty to act in good faith, and acted negligently. (Dkt. No. 3, Compl. at 25-  
22 26.) Aecon seeks declaratory relief and damages. (Dkt. No. 24, First Am. Compl. at 8-9.)

23       The immediate matter relates to Aecon’s tender to Zurich and Zurich’s and its counsel’s  
24 conduct. On May 3, 2006, Aecon tendered the Quinault’s claims against Aecon to Western  
25 Partitions and Zurich. (Dkt. No. 105-5.) Zurich set up a claim file and assigned claim number  
26 9260036391 to Aecon’s tender. On June 28, Caryn Kreman, a Zurich claims handler, sent a  
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1 letter denying Aecon's tender. Her denial letter stated:

2 We do not have a copy of the subcontract agreement. However if there is a written  
3 subcontract agreement requiring Western Partitions, Inc. to name Aecon Building  
4 Inc., a/k/a/ BFC Frontier, Inc. as an insured under the policies, they would be an  
5 insured under the policy until work has been completed or put to its intended use.  
6 It is our understanding this project has be[en] completed and/or put to its intended  
use. It is further our understanding that this loss arises out of construction defects  
and resulting damage that took place following completion of the project. Therefore  
we must respectfully deny the tender of defense of Aecon Building Inc. a/k/a/ BFC  
Frontier, Inc.

7 (Dkt. No. 134, Blood Decl., Ex. 1 at ZC 000022.) Ms. Kreman's claims notes indicate that she  
8 closed the file that same day.<sup>2</sup> (Id. at ZC 000002.)

9 About a year after Ms. Kreman denied Aecon's tender, starting in May 2007, another  
10 claims adjuster, Lorelee Thatcher, reexamined the claim. It is unclear whether any attorney  
11 instructed Ms. Thatcher to work on the claim. Indeed, at oral argument, Zurich's counsel  
12 admitted that he did "not know who instructed her to make the additional insured  
13 determination." (Aug. 5, 2008 Oral Argument.) Ms. Thatcher gathered documents in her  
14 investigation of the claim and she made notes in the same electronic file in which Ms. Kreman  
15 had worked. She determined that Aecon was potentially covered as an additional insured under  
16 the Western Partitions' policy. (Dkt. No. 124, Blood Decl., Ex. 13 at 52, 57-58; Ex. 14 at ZC  
17 000916.) She believed that her determination was "opposite" of what Ms. Kreman had decided.  
18 (Id., Ex. 13 at 67.) Her July 17, 2007 claims notes indicate: "Now have copies of contract, AIE  
19 and allegations of defective work on insured's part. Unclear what, if any resultant damage, but  
20 sufficient to trigger AI coverage." (Id., Ex. 14 at ZC 000916.) She explained that her  
21 determination meant that if the policy covered Western Partitions, Aecon was also covered. (Id.,  
22 Ex. 13 at 58.) Although it would have been typical of her to do so, Ms. Kreman did not issue a  
23 reservation of rights letter informing Aecon of her determination; someone from Zurich's legal  
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26 <sup>2</sup> The "claims notes" electronically document work that an adjuster (or other employee)  
27 does on a particular claim number.

1 department told her not to do so because the matter was in litigation.<sup>3</sup> (Id. at 18-20, 55-56.) And  
2 although it would have been typical for her to do so, she was instructed not to determine whether  
3 Zurich had a duty to defend or indemnify Aecon. She was instructed to cease work on the claim.  
4 (Id. at 84.) It is undisputed that no one from Zurich informed Aecon directly or through counsel  
5 of Ms. Thatcher's work on the claim or her final determination. Ms. Thatcher testified in  
6 deposition that she produced a copy of her file to Zurich's litigation counsel at the law firm of  
7 Soha & Lang. (Id. at 33.)

8 Discovery in this matter was scheduled to close on June 2, 2008. (Dkt. No. 14.) On  
9 September 4, 2007, Zurich filed initial disclosures listing among the potential individuals who  
10 may have discoverable information: "Present and former employees of the Zurich Defendants."  
11 (Dkt. No. 124, Blood Decl., Ex. 1 at 7.) Zurich did not identify Ms. Thatcher by name in its  
12 initial disclosures and never supplemented that disclosure to reveal her name. On November 20,  
13 2007, Aecon propounded Requests for Production in which it requested production of "a true,  
14 correct and complete copy of the entire (a) underwriting and (b) claims files for the Policies  
15 [issued to Western Partitions from 1998-2001] including, but no[t] limited to, all electronic  
16 communications and data contained therein or pertaining thereto and all paper or document  
17 files." (Id., Ex. 2 at 7.) Aecon also requested production of a copy of "each and every document  
18 that was reviewed, referenced or relied upon in connection with [Zurich's] decision to approve  
19 or deny benefits to Aecon under the Policies." (Id.) In response, Zurich produced the "claim file  
20 (ZC 000001-882)," which did not include any materials reflecting that anyone had worked on the  
21 file after Ms. Kreman closed it on June 28, 2006. (Id., Ex. 3; Blood Decl. ¶ 20.) In particular, the  
22 claims notes produced by Zurich did not reflect Ms. Thatcher's work on the claim. (Id., Ex. 7

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24 <sup>3</sup> During her deposition on May 20, 2008, Ms. Thatcher was instructed by Zurich  
25 counsel not to reveal the substance of her conversation with Zurich's in-house lawyers or those  
26 lawyers' identities. (Id., Ex. 14 at 74-75.) When asked at oral argument why the identities of the  
27 lawyers providing advice are privileged, counsel had no response except to withdraw the objection.  
(Aug. 5, 2008 Oral Argument).

1 (ZC 000002-4.)

2 In February 2008, Zurich produced a privilege log for the documents previously  
3 produced. (Id., Ex. 4.) The log did not identify any materials created or used by Ms. Thatcher.  
4 (Id.) On March 3, 2008, in a second Request for Production, Aecon requested “your Electronic  
5 Claim File (“ECF”), including documented changes, for the Aecon claim” and “your paper and  
6 electronic memoranda and correspondence regarding the Aecon claim.” (Id., Ex. 5 at 11-12.) In  
7 response, Zurich pointed to the claim file documents already produced — “ZC 000001-882” —  
8 and produced an “Abbreviated Case Summary Report – Construction Defect,” which it  
9 numbered ZC 000883-88. (Id.) The “Abbreviated Case Summary Report” did not document Ms.  
10 Thatcher’s work on the file. (See id. at ZC 000883.) In an April 14, 2008, brief filed with the  
11 Court (responding to Plaintiff’s motion to compel production of the separate Western Partition’s  
12 claims file), Zurich wrote: “The Zurich Defendants have already produced the claim file for  
13 Aecon’s tender as an additional insured under Western Partitions’ policies.” (Dkt. No. 59 at 3.)  
14 On May 1, 2008, Zurich produced a revised privilege log that again failed to indicate that it was  
15 withholding documents related to Ms. Thatcher’s work on the file. (Id., Ex. 6.) And in a May 2,  
16 2008 deposition, Caryn Kreman, the original adjuster and Zurich’s Fed. R. Civ. P. 30(b)(6)  
17 designee relating to the claims file, testified that she believed that she had been the only claims  
18 handler to work on Aecon’s tender and that it was her understanding that the complete claims  
19 file, including a complete set of claims notes, had been produced to Aecon. (Dkt. No. 124, Blood  
20 Decl., Ex. 11 at 71-72, 119-120, 252; Ex. 12.) Her supervisor, Eric Brunner, also testified in late  
21 April 2008 in deposition that he had “no information as to whether Lorelee Thatcher ever  
22 worked on Aecon’s claim either prior to the actual denial or after.” (Id., Ex. 10 at 10, 40.)

23 In February 2008, Aecon noted Ms. Thatcher’s deposition, not because it thought she had  
24 handled the claim, but “because she had signed two declarations for her employer in this action,  
25 authenticating numerous Zurich documents.” (Id., Ex. 8; McGillis Decl. ¶ 2.) On March 10, in a  
26 letter responding to Aecon’s letter regarding depositions, Zurich mentioned for the first time that

1 Ms. Thatcher was involved in handling Aecon's claim: "The persons who were actually involved  
2 in the claim were Lorelee Thatcher and Caryn Kreman, and possibly Eric Brunner." (Dkt. No.  
3 124, Blood Decl., Ex. 9.) Zurich's litigation counsel, Gary Sparling from the Soha & Lang law  
4 firm, reports that around that same time he informed Aecon's counsel that Ms. Thatcher "had  
5 been assigned to the Aecon file after this lawsuit was filed, that she had been communicating  
6 with our firm regarding this suit, and that most or all of her knowledge would be subject to the  
7 attorney-client privilege and work-product doctrine." (Dkt. No. 153, Sparling Decl. ¶ 4.) After  
8 Ms. Thatcher's deposition, where she revealed that she had indeed worked on and made a  
9 determination regarding the file, and after the parties met and conferred on the matter,<sup>4</sup> on May  
10 23, just days before the close of discovery, Zurich produced the "relevant, non-privileged  
11 portions of Lorelee Thatcher's file in this matter."<sup>5</sup> (Dkt. No. 124, Blood Decl., Ex. 14.) Zurich  
12 produced additional claims notes for "Claim 926003691," the same claim number that Ms.  
13 Kreman had worked on, and the same claim number for which Zurich had previously produced  
14 claim notes, but which had not been included in the earlier production. (*Id.*) Zurich also  
15 produced for the first time a privilege log for that portion of the claim file attributable to Ms.  
16 Thatcher. (*Id.*, Ex. 17.) In that privilege log, Zurich indicates that it is withholding about twenty  
17 pages of documents on the basis of attorney-client or work-product privilege. (*Id.*) Apparently,  
18 Zurich continues to withhold those documents.

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21 <sup>4</sup> Zurich makes the unsupported assertion that the parties never met and conferred.  
22 (Def.'s Resp. at 2.) Zurich submits no evidence in support of that assertion. Aecon offers the  
23 declaration of its attorney, Tim Blood, who states that immediately after Ms. Thatcher's deposition,  
24 he conferred in person with Zurich's counsel, Gary Sparling, in an effort to immediately obtain the  
25 claims file material referenced by Ms. Thatcher in her deposition. (Blood Decl. ¶ 21.) Given the  
26 evidence presented, the Court concludes that the parties conferred.

27 <sup>5</sup> Although Zurich counsel repeatedly refers to "Lorelee Thatcher's file," it is  
undisputed that her "file" was the exact same file that Ms. Kreman had worked on, that is, Aecon's  
tender to Zurich, the 9260036391 file.

## Discussion

Zurich's failure to include in its responses to requests for production any documentation of Ms. Thatcher's work on the claim file, and its failure to produce, until the eleventh hour, a privilege log documenting those portions of the claim file attributable to her that it withheld on the basis of privilege, are clear violations of the discovery rules. See Fed. R. Civ. P. 26(e)(1) (requiring parties to supplement or correct responses to requests for production) & 26(b)(5) (requiring production of privilege log when information otherwise discoverable is withheld). Without citing any legal authority, Zurich argues that it was under no obligation to produce the documents in "Ms. Thatcher's file" or to produce a privilege log because the documents are protected by work-product and attorney-client privilege. (Def.'s Resp. at 4.)

A party withholding materials under an assertion of privilege has the burden of proving that the withheld materials are actually privileged. See Heath v. F/V Zolotoi, 221 F.R.D. 545, 549 (W.D. Wash. 2004). Work-product protection applies to "documents and tangible things prepared in anticipation of litigation or for trial" by or on behalf of a party. Fed. R. Civ. P. 26(b)(3). Documents prepared in the ordinary course of business are not protected. Fed. R. Civ. P. 26(b)(3), 1970 Advisory Committee Notes. Attorney-client privilege protects confidential communications between attorneys and clients. The "essence of the attorney/client relationship is whether the attorney's advice or assistance is sought and received on legal matters." Bohn v. Cody, 119 Wn.2d 357, 363 (1992).

Zurich has failed to satisfy its burden of showing that the originally withheld materials are privileged. The facts it cites in support of its assertion of attorney-client or work product privilege are (a) the timing of Ms. Thatcher's work — she reassessed the tender after Aecon filed this lawsuit, (b) the fact that she obtained the subcontract agreement from Zurich's litigation counsel, Soha & Lang, and (c) the fact that Ms. Thatcher discussed the claim with Zurich's in-house and litigation counsel. The only conversations or interactions with counsel that Ms. Thatcher referred to in her deposition were the following: (1) she obtained materials missing

1 from the file from Soha & Lang (Dkt. No. 124, Blood Decl., Ex. 13 at 16); (2) in-house counsel  
2 instructed her not to inform Aecon of her final determination and to cease work on the claim (id.,  
3 at 19-20); and (3) she provided Soha & Lang with copies of her file. Ms. Thatcher did not rely  
4 on counsel before making her determination. (Id. at 22.) Zurich offers no other declarations or  
5 exhibits supporting its assertion of privilege.

6         These facts do not prove that Ms. Thatcher’s additions to the claims file are privileged as  
7 work-product. Contrary to Defendant’s suggestion otherwise, Zurich has failed to show that Ms.  
8 Thatcher was “assigned to [work on] the file specifically in response to this lawsuit.” (Def.’s  
9 Resp. at 2.) She testified to just the opposite — Ms. Thatcher testified that she believed Aecon  
10 had “re-tendered” its claim and that she received the assignment through the normal assignment  
11 queue. (Dkt. No. 124, Blood Decl., Ex. 13 at 18, 66.) Zurich has also failed to offer evidence  
12 identifying any lawyer who (a) assigned the matter to Ms. Thatcher, (b) communicated with her  
13 regarding the substance of the claim, or (c) instructed her to cease working on the claim.<sup>6</sup> Zurich  
14 cannot cloak Ms. Thatcher’s work under work-product privilege just because she happened to  
15 work on the claim at the same time this litigation was progressing. See HSS Enters., LLC v.  
16 Amco Ins. Co., Case No. C06-1485-JPD, 2008 U.S. Dist. LEXIS 11841, at \*13 (W.D. Wash.  
17 Jan. 14, 2008) (explaining that because insurance companies have a duty to investigate,  
18 evaluate, and adjust claims made by their insureds, “the creation of documents during this  
19 process is part of the ordinary course of business of insurance companies, and the fact that  
20 litigation is pending or may eventually ensue does not cloak such documents with work-product  
21 protection”). Nor has Zurich shown that any of the at-issue materials are protected by attorney-  
22 client privilege.<sup>7</sup>

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24         <sup>6</sup> As previously mentioned, at oral argument, Mr. Sparling could not identify who  
25 assigned Ms. Thatcher to work on the file. He “believed” that he and another in-house attorney  
instructed her to cease work on it.

26         <sup>7</sup> And even if some of the materials should be protected as attorney-client  
27 communications, for at least three of the documents noted in the late-produced privilege log, Zurich



1 Even if it could withhold production of some of the materials under one of the privileges,  
2 Zurich was undeniably obligated to produce a privilege log documenting its assertion of the  
3 privilege:

4 When a party withholds information otherwise discoverable by claiming that the  
5 information otherwise discoverable is privileged or subject to protection as trial-  
6 preparation material, the party must: (i) expressly make the claim; and (ii) describe  
7 the nature of the documents, communications, or tangible things not produced or  
disclosed — and do so in a manner that, without revealing information itself  
privileged or protected, will enable other parties to assess the claim.

8 Fed. R. Civ. P. 26(b)(5). Thus, if it withholds requested materials on the basis of privilege, a  
9 party is obligated to document those materials in a privilege log to give the requesting party an  
10 opportunity to assess the privilege asserted. Zurich did not do that here. Indeed, at oral  
11 argument, Zurich's counsel conceded that a privilege log should have been produced.

12 Zurich's actions (or those of its litigation counsel) also violate the spirit of the discovery  
13 rules: until March 2008 — after Aecon noted Ms. Thatcher's deposition — Zurich represented to  
14 Aecon and to this Court that it had produced the entire claims file regarding Aecon's tender to  
15 Zurich. Zurich's initial disclosures did not document Ms. Thatcher's involvement in or handling  
16 of the claim (Dkt. No. 124, Blood Decl, Ex. 1), its 30(b)(6) witness represented that the entire  
17 claims file had been produced and that she was the only adjuster to work on the claim (id., Ex.  
18 11 at 72, 119-20), and in a brief filed with this Court, Zurich implied that it had already produced  
19 the entire claims file (Dkt. No. 59 at 3). Zurich thus concealed Ms. Thatcher's involvement in  
20 the claims handling process for as long as it could, that is, until Aecon fortuitously noted her  
21 deposition. This flagrant violation of both the letter and the spirit of the discovery rules will not  
22 be tolerated.

23 Federal Rule of Civil Procedure 37(c) authorizes the Court to impose sanctions for (a) a  
24 party's failure to identify witnesses in its initial or supplemental disclosures or (b) a party's  
25 failure to supplement or correct responses to interrogatories or requests for production. Fed. R.

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27 only asserts work-product privilege. (Id., Ex. 14.)

1 Civ. P. 37(c); Fed. R. Civ. P. 26(a) & (e). The rule provides:

2 (1) Failure to Disclose or Supplement. If a party fails to provide information or  
3 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that  
4 information or witness to supply evidence on a motion, at a hearing, or at a trial,  
unless the failure was substantially justified or is harmless. In addition to or instead  
of this sanction, the court, on motion and after giving an opportunity to be heard:

5 (A) may order payment of the reasonable expenses, including attorney's fees,  
caused by the failure;

6 (B) may inform the jury of the party's failure; and

7 (C) may impose other appropriate sanctions, including any of the orders  
listed in Rule 37(b)(2)(A)(i)-(vi).

8 Fed. R. Civ. P. 37(c).

9 Aecon originally requested that the Court enter default judgment against Zurich as a  
10 sanction for its discovery abuses. See Fed. R. Civ. P. 37(b)(2)(A)(vi). In light of the Court's  
11 order granting Aecon's motion for summary judgment on its bad faith claim against Zurich,  
12 Aecon requested at oral argument that the Court instead award fifty percent of the amount Aecon  
13 intends to seek at trial from Defendants — about \$2 million.

14 Zurich argues that any discovery violations on its part were either substantial justified or  
15 harmless. Zurich argues that its non-disclosure was "substantially justified" because the  
16 withheld documents were privileged. As discussed above, Zurich has not carried its burden of  
17 showing privilege, and even if it could, it was still obligated to produce a privilege log. Its  
18 violations of the discovery rules are not justified. Nor are they harmless. Zurich argues that Ms.  
19 Thatcher's determination was consistent with Ms. Kreman's because Ms. Kreman assumed that  
20 Aecon was an additional insured and Ms. Thatcher confirmed that fact. Regardless of whether  
21 the determinations were consistent, however, Aecon had an interest in investigating Zurich's  
22 conduct in handling its claim. This is a bad faith action and, as Aecon points out, Ms. Thatcher's  
23 work is highly probative of Aecon's assertion that Zurich conducted a bad faith investigation of  
24 its tendered claims. Aecon's ability to investigate Zurich's handling was severely limited by the  
25 fact that Zurich failed to reveal Ms. Thatcher's involvement in the handling until the end of the  
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1 discovery period.<sup>8</sup> Moreover, although many of the documents in Ms. Thatcher’s portion of the  
2 file were the same documents that Ms. Kreman looked at, Zurich did not produce, until the close  
3 of discovery, Ms. Thatcher’s claims notes. Aecon thus did not know of her determination — that  
4 the allegations were “sufficient to trigger AI coverage” — until the end of the discovery period.  
5 Finally, Zurich continues to withhold documents related to Ms. Thatcher’s handling of the claim.  
6 Thus, Zurich’s violations are not “harmless.”

7       The type of information that Zurich has withheld is the type of basic discovery that a  
8 lawyer practicing under the federal rules should know he or she is obligated to turn over — both  
9 as part of initial disclosures and in response to discovery requests. The length of time between  
10 Ms. Thatcher’s involvement in the file and Zurich’s production of her portion of the claims file,  
11 the number of opportunities for disclosure, and the simplicity of the rules as applied here all lead  
12 the Court to believe that counsel’s failure to disclose Ms. Thatcher’s involvement was not a mere  
13 oversight. Lawyers may not profit by violating the procedural rules, hiding materials from party  
14 opponents, misrepresenting their disclosures to the Court, or ignoring the requirements of a  
15 proper discovery log.

16       Sanctions are therefore clearly warranted. But the Court has already imposed the  
17 sanction of coverage by estoppel for Zurich’s bad faith claims handling. And the Court will not  
18 impose the sanction requested by counsel at oral argument — that amount is not sufficiently tied  
19 to the violation here. Instead, the Court crafts its own sanction, as it is authorized to do under  
20 Rule 37(c)(1)(C), and imposes a sanction equal to the amount that Zurich has been billed by its  
21 litigation counsel for representation in this action between the date Zurich filed its initial  
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23       <sup>8</sup> Zurich suggests that it disclosed Ms. Thatcher’s involvement earlier. Although  
24 counsel made some offhand remarks about Ms. Thatcher’s involvement after Aecon noted her  
25 deposition, Zurich never produced her claims notes or her portion of the claims file until after her  
26 deposition, just a few days before the close of discovery. Thus, until late May, Aecon had no  
27 documentation of her involvement, and in fact, had been informed by Zurich’s 30(b)(6) witness that  
only Ms. Kreman worked on the claim. The offhand remarks regarding her involvement, in light  
of the surrounding circumstances, do not constitute compliance with the discovery rules.

1 disclosures on September 7, 2007, and the date Zurich finally produced Ms. Thatcher's portion  
2 of the claims file, May 23, 2008. The Court concludes that a sanction of an amount equal to the  
3 amount the law firm billed its client during this time period is reasonably proportionate to the  
4 offending conduct here.

5 **Conclusion**

6 Zurich's violations of the applicable discovery rules will not be tolerated. The Court  
7 imposes a monetary sanction of an amount equal to the amount that Zurich's litigation counsel  
8 has billed Zurich for its work during the discovery period. To calculate the amount owed, Zurich  
9 is ordered to produce all bills covering Soha & Lang's work on this matter from September 4,  
10 2007 through May 23, 2008. Within thirty (30) days of this order, the funds shall be deposited  
11 with the Clerk of the Court, who will be directed to place them in a blocked, interest bearing  
12 account. The Court will determine to what use the funds will be put at the end of the litigation.

13 The clerk is directed to send a copy of this order to all counsel of record.

14 Date: August 15<sup>th</sup>, 2008.

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16 Marsha J. Pechman  
17 United States District Judge  
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